IT 98-0082-GIL 10/19/1998 PUBLIC LAW 86-272/NEXUS

General Information Letter: There is no "casual sale" provision which would exempt a taxpayer (who otherwise has nexus) from Illinois income taxation.

October 19, 1998

Dear:

This is in response to your letter dated September 28, 1998, in which you request a letter ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. *See* 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter you have stated the following:

1. A Virginia Subchapter S Corporation has entered into a contract to provide and install back up power supply equipment at xxxxx xxx xxxxx xxxx in Illinois.

2. Generally, installing or supervising installation would create sufficient nexus to cause the corporation to be taxable in Illinois.

3. The corporation anticipates that this will be the only activity generated in the state of Illinois.

4. If the Corporation conducts no other activity in the state of Illinois during the year (1998), the Corporation could avail itself of the ruling regarding casual sales which would provide that the Corporation would not be subject to taxation in the state of Illinois.

If my understanding of the foregoing is correct, I would appreciate it if you would sign the acknowledgement below and return a copy of this letter to me for my files.

Response

In your letter, you assert that your client, the taxpaying S-corporation, will be engaging in sufficient activity in Illinois to establish nexus and to be subject to Illinois corporate income taxation. If nexus is clear, a non-resident taxpayer is subject to taxation on income apportioned to Illinois under the provisions of the Illinois Income Tax Act (IITA), Section 304 (35 ILCS 5/304).

For non-resident taxpayers with business income from Illinois and from other states, the amount of income subject to tax by this state is determined by multiplying all the taxpayer's income by a fraction calculated from a weighted averaging of property, payroll and sales in Illinois compared to property, payroll and sales in all jurisdictions. A copy of Section 304 is enclosed. Note that the three-factor weighted averaging formula will change for tax years ending after December 31, 1998 and that, by December 31, 2000, Illinois will have a single factor calculation based upon sales.

Your reliance on a "casual sales" concept is misplaced in this context, since, once nexus is established, the amount of income subject to tax is a straightforward mathematical calculation. You may have in mind an occasional or casual sale principle in the area of sales and use tax. It has no application in the Illinois Income Tax Act.

Please note that S-corporations are subject to an entity-level tax which is based upon net income. The tax is called the Personal Property Tax Replacement Tax and is 1.5 per cent of Illinois income. (35 ILCS 5/201(c)). Also, non-resident S-corporation shareholders may be subject to Illinois income tax on their distributed shares of any of the Illinois taxable income of the S-corporation (35 ILCS 5/308).

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp
Staff Attorney -- Income Tax